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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

THE FACEBOOK, INC. and MARK ZUCKERBERG, Plaintiffs, v. CONNECTU, INC. (formerly known as CONNECTU, LLC), CAMERON WINKLEVOSS, TYLER WINKLEVOSS, DIVYA NARENDRA, PACIFIC NORTHWEST SOFTWARE, INC., WINSTON WILLIAMS, WAYNE CHANG, and DAVID GUCWA, Defendants.	Case No. 5:07-CV-01389-RS **REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF FACEBOOK'S MOTION TO COMPEL PACIFIC NORTHWEST SOFTWARE AND WINSTON WILLIAMS TO PROVIDE COMPLETE AND SUPPLEMENTAL RESPONSES TO FACEBOOK'S FIRST SET OF INTERROGATORIES NOS. 3 AND 4** Date: November 28, 2007 Time: 9:30 A.M. Judge: Hon. Richard Seeborg

PUBLIC REDACTED VERSION

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I. INTRODUCTION

Facebook's motion to compel should be granted. In attempting to defeat Facebook's motion, Pacific Northwest Software ("PNS") and Winston Williams ("Williams") submit a carefully crafted declaration that purports to moot the necessity of Facebook's motion to compel. However, rather than resolving the inadequacies of their responses to Facebook's Interrogatories Nos. 3 and 4, the Williams Declaration brings to light additional problems regarding Defendants' insufficient responses to Facebook's discovery requests. Documentation produced by Defendants shows that they actually have the information requested, and are only avoiding disclosure to try and undermine the profound harm that evidence presents to their defenses.

In their opposition, PNS and Williams also request several kinds of inappropriate relief. For instance, they request that this motion to compel be taken off calendar on the basis of mootness. As set forth herein, the matter is far from moot, as the evidence is unequivocal that both PNS and Williams possess relevant information that they refuse to produce in response to Interrogatories Nos. 3 and 4. Further, the Williams Declaration falls short of satisfying PNS' and Williams' obligation to provide full and complete responses to the interrogatories, as required by Rule 33, Fed. R. Civ. P. Indeed, the Williams Declaration is based upon an analysis of incomplete data and fails to consult all information available to Defendants.

PNS and Williams also make a procedurally improper request for sanctions that fails to comply with Civil Local Rule 37-3. The request is nothing more than an *ad hoc* and bad faith reaction to the currently pending motion for sanctions filed by Facebook. On that basis alone the request should be denied, and Facebook's motion granted.

II. ARGUMENT

Defendants' arguments for why they cannot supplement Interrogatories Nos. 3 and 4 are wholly specious. The Williams Declaration reflects that the search and analysis of the materials located by Defendants was incomplete. Indeed, the Williams Declaration is intentionally vague as to what even was searched, or why. The incompleteness of the Defendants' analysis is further borne out by the fact that Defendants have produced numerous documents which reference URLs and IP addresses for computers that were utilized by PNS and Williams to access the Facebook website, but which were not searched and were not disclosed in Defendants' discovery responses. Many of these IP addresses and URLs were personally referenced by PNS' CEO John Taves in the documents; yet, Taves is the same individual who signed the Interrogatory Responses for PNS claiming the company has no knowledge whatsoever of what URLs and IP addresses were used to access Facebook. This glaring discrepancy alone warrants granting the motion to compel. Additionally, Plaintiffs have identified source code produced by Defendants which proves it is possible for Defendants to determine how many emails were sent to solicit Facebook members to join ConnectU, including the number of emails specifically sent to students at California schools. All these omissions prove that Defendants' current responses to Interrogatories Nos. 3 and 4 are inadequate, and that supplementation of those responses is necessary.

A. **The Williams Declaration Is Premised Upon A Self-Serving Analysis Of Limited And Incomplete Data**

In an attempt to defeat Facebook's motion to compel, PNS and Williams have submitted the brief, self-serving declaration of Winston Williams.[1] Williams declares that at some point after he and PNS initially responded to Interrogatories Nos. 3 and 4, "John Taves ... forwarded to counsel certain files found on the following servers: 207.244.158.164, 207.244.158.165 and 207.244.158.34." Decl. of Scott R. Mosko ("Mosko Decl."), Exh. 3, ¶ 3. Based on this limited universe of server material, none of which has been produced to Plaintiffs, Williams states that he participated in some type of an "analysis" of several of the files to determine whether the information in them could be used to respond to Interrogatories Nos. 3 and 4, and decided they were not "helpful." *Id.*¶ 5.

By Williams' own admission, his Declaration is based solely on some type of unexplained review of certain files selected by John Taves from an incomplete list of servers. *Id.* ¶ 4. Further, Williams does not purport that the search covered all places where responsive information would exist. *Id.* In fact, Williams provides no testimony or explanation as to exactly what was his

[1] Defendants argue in their Introduction that they provided the Williams Declaration to Plaintiffs "several days" before their Opposition was due. This is one of many misrepresentations by Defendants. They actually did not forward the declaration until well after close of business, at 7:03 P.M., on November 5, 2007. *See* Cooper Reply Decl. Exh. L. Defendants filed their Opposition on the afternoon of November 7, 2007.

search methodology. Nor is any explanation offered by him or Taves explaining what exactly were files that were analyzed, how they were located, or why they were originally deemed potentially relevant so as to be searched.

Williams' Declaration actually underscores that the search and analysis were insufficient. Williams and PNS assume that the entire universe of responsive information only exists on the servers identified by the three IP addresses set out in Williams' prior response to Interrogatory No. 3, which admittedly "were used to obtain data from thefacebook.com": (a) 207.244.158.164; (b) 207.244.158.165; and (c) 207.244.158.34. *See* Sutton Decl., Exh. E at 5. Williams further presumes that an investigation of only those files would yield *all* responsive information to Interrogatories 3 and 4. *See* Mosko Decl., Exh. 3, ¶¶ 3-6.

Both of these assumptions impermissibly exclude other relevant sources of information Defendants are required to consult and investigate. In fact, Williams testified during his deposition that he accessed the Facebook website from "many" more IP addresses than what he identified in his response to Interrogatory No. 3, including from a computer terminal used by Joel Voss, a PNS programmer directly involved with the development of the ConnectU importer. Cooper Reply Decl., Exh. I at 65:9-70:22. No explanation is offered by either Williams or PNS why these other servers cannot now be identified or searched, or what efforts (if any) were made to identify them. Indeed, the record shows they can be identified, and responsive information about those servers is missing from both PNS and Williams' Interrogatory responses.

B. Documented Communications Prove That PNS And Williams' Responses To Interrogatories Nos. 3-4 Are Incomplete

The insufficiency of Defendants' responses is perhaps best illustrated by the fact the they claim they cannot identify IP addresses or URLs that their own documents prove they are familiar with. Specifically, Facebook's Interrogatory No. 3 specifically demanded Defendants identification of *all* IP addresses and URLs that PNS or Williams either "used" or "accessed" in order to obtain data from any website associated with Facebook. Sutton Decl. Exhs. D-E (Responses to Interrogatory No. 3). Interrogatory No. 4 then demanded that PNS and Williams identify all instances (including dates) when they distributed email communications to email addresses that they had obtained from the Facebook website, including an identification of all email addresses of persons in California. *Id.* (Responses to Interrogatory No. 4).

However, the central theme of Defendants' Opposition to the Motion to Compel is that PNS and John Taves (the company's CEO) have "no knowledge that will enable [PNS] to answer" these interrogatories at all, and hence only Williams can in any way respond to the interrogatories in the very limited fashion that he has. Sutton Decl., Exh. D (PNS Responses to Interrogatories Nos. 3-4); Opp'n Br. at 7-9. In that regard, PNS' responses to Interrogatories Nos. 3-4 are signed by the company's CEO John Taves, who simply states "[r]esponding party believes Winston Williams may have information regarding [these] interrogator[ies]." *See* Sutton Decl. Exh. D (Responses to Interrogatories Nos. 3 & 4).

However, notwithstanding this sworn representation of a lack of knowledge, co-Defendant David Gucwa produced copies of several of his instant message conversations with his co-defendants relating to the development of the Importer and Social Butterfly programs at issue in this case. Those communications unambiguously prove that PNS and Williams possess far more knowledge concerning IP addresses and URLs used to access Facebook than they state in their respective responses. Indeed, they completely undermine Taves' credibility on the subject.

For instance, in one of those conversations dated January 25, 2005, Taves, identified by his instant message name "JTpickAtime,"[2] personally identified at what URLs the Facebook "Importer" script could be pointed to on PNS' servers:

> (19:07:20) David Gucwa: I was on pickatime
> (19:07:34) David Gucwa: The CU importer script is on there
> (19:07:37) JTpickAtime (John): ww3.pickatime.com = web3 = cu.pnwsoft.com = ch.pnwsoft.com = jt.pnwsoft.com
> (19:07:41) David Gucwa: ok
> (19:08:35) David Gucwa: i basically just make changes to the importer page
> (19:08:50) JTpickAtime (John): what's the importer page?
> (19:09:12) David Gucwa: it imports user profiles from thefacebook, friendster, etc into your CU account
> (19:09:23) JTpickAtime (John): oh cool.

Cooper Reply Decl. Exh. J (GUCWA 0134) (emphasis added). A later communication between Taves and Gucwa even referenced a specific file location for importer at these URLs. *Id.*

[2] *See* Cooper Reply Decl. Exh. J (GUCWA 0128) at 15:16:46 – 15:17:02.

(GUCWA 0136) at 15:46:02-15:57:00. However, although the URLs "ww3.pickatime.com," "cu.pnwsoft.com," "ch.pnwsoft.com," and "jt.pnwsoft.com" mentioned by Taves all are responsive to Plaintiffs' Interrogatory No. 3, neither PNS nor Williams identify any of these URLs in their respective responses. *See* Sutton Decl. Exhs. D-E (Responses to Interrogatory No. 3). This fact alone proves the Interrogatory responses are inadequate.

Moreover, there are other communications that further prove PNS' and Williams' responses need immediate supplementation. In a January 17, 2005 instant message conversation with Gucwa, Taves was able to identify a specific IP address and two other URLs that were used by PNS to host the ConnectU database, including the Facebook Importer:

> (13:54:01) David Gucwa: I'm having trouble logging into http://db.pickatime.com:900/svn/Connect
> (13:54:17) David Gucwa: I did it fine on Friday but now it's not accepting my username/password
> (13:54:21) JTpickAtime: try 216.127.32.54:900
>
> …
>
> (14:55:55) JTpickAtime: add an entry in your hosts file
> (14:56:01) JTpickAtime: 216.127.32.54 db.pickatime.com
> (14.56:12) JTpickAtime: And a note to remove it in a day or so.
> (14:56:28) JTpickAtime: Then you should be able to get to db.pickatime.com:900.

Cooper Reply Decl. Exh. J (GUCWA 128) (emphasis added). Incredibly, neither the IP address 216.127.32.54 nor the URL "db.pickatime.com," both of which Taves was able immediately to identify in his conversation with Gucwa, are not mentioned in either PNS or Williams' responses to Interrogatories Nos. 3. *See* Sutton Decl., Exhs. D-E (PNS' and Williams' Responses to Interrogatory No. 3) In fact, this is just one example of many omissions.

In a later conversation with co-Defendant Wayne Chang, Gucwa specifically associated the URL for "importer" with the IP address 216.127.32.228, as well as http://dg.cu.pnwsoft.com/import/. Cooper Reply Decl. Exh. J (GUCWA 0090) at 16:16:16-16:43:35. Yet again, this IP address and URL are not included in either PNS' or Williams' responses to Interrogatory No. 3. Their absence underscores why the Defendants' current interrogatory responses are incomplete and evasive. The motion to compel must be granted.

C. PNS and Williams Used More Than The Three Servers Identified In Williams' Response To Interrogatory No. 3 To Access Facebook's Website

Both the Defendants Interrogatory responses and Williams' Declaration appear to be premised on the assumption that only computers with the three IP addresses 207.244.158.164, 207.244.158.165, and 207.244.158.34 were used by Defendants to access the Facebook website. *See* Sutton Decl., Exh. E (Response to Interrogatory No. 3). As reflected simply by the communications of which Taves himself was a party, that assumption clearly is false. More to the point, a wealth of documentation produced by Defendants proves computers with many other URLs and IP addresses were employed by Defendants – all of which computers apparently were ignored when Defendants responded to the Interrogatories.

For instance, in an instant message conversation between Gucwa and PNS employee Joel Voss (identified as "Javanteal") dated January 31, 2005, Gucwa conveyed an instruction from Taves that server space needed to be set up for the development of ConnectU Importer code. Cooper Reply Decl. Exh. J (GUCWA 0118) at 15:55:04-15:57:48. Voss then explained that because the importer program being developed by Gucwa was not in PNS "Subversion" ("svn") controlled source code database, Gucwa needed to "copy the import directory from cu_test to dgcu_test," and therefore needed to access the database at the PNS server with the URL http://db.pickatime.com:900/svn/Connect/connect. *Id.* at 15:56:11-16:11:04. Voss then further explained to Gucwa how to set up a virtual host so that he could access the "hop" server space at pickatime.com, identified with the IP address 216.127.32.228. *Id.* at 16:01:51-16:24:58.

As the conversation reflects, the PNS server spaces located at the URLs http://db.pickatime.com:900/svn/Connect/connect and hop.pickatime.com, as well as the server bearing the IP address 216.127.32.228, all were specifically set up to develop and test ConnectU's Facebook Importer code. *Id.* at 15:55:04-16:24:46. Yet, once again, the URLs and IP address were not identified by either Williams or PNS in their discovery responses, as they should have been. *See* Sutton Decl. Exhs. D-E (Responses to Interrogatory No. 3).[3]

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[3] One communication between Voss and Gucwa specifically identifies one of the *directory files* where imported information was *stored* (and hence should still be available in both a table and a directory in PNS' database for access in responding to Interrogatory No. 4):

In fact, these missing URLs and missing IP addresses themselves represent only a small example of the evidence which proves that PNS and Williams' prior interrogatory responses are incomplete. The evidentiary record actually is replete with additional URLs and IP addresses that also appear to have been used or accessed by Defendants in order to obtain data from websites associated with Facebook. Among those URLs or IP addresses are the following, none of which are referenced in Defendants' responses to Interrogatories Nos. 3 or 4: (a) 192.168.0.35 (Cooper Reply Decl., Exh. J (GUCWA 0112) at 13:41.40-13:43:58)[4]; (b) 207.114.225.164 (*id.* (GUCWA 0147) at 17:00:34-17:00:53); (c) web.connectu.com (*id.*); (d) http://dev.connectu.com/importer (*id.* (GUCWA 0142) at 18:42:42, 19:11:43-19:46:43; (GUCWA 004) at 18:50:13-19:04:11); (e) http://cu.pnwsoft.com/import (*id.* (GUCWA 0068) at 17:44:24-17:45:05); (f) 69.44.59.182 (*id.* (GUCWA 0075-77) at 17:27:05-17:28:47); (g) unix15.dmbhosting.com (*id.* at 17:59:32-17:59:54); (h) 66.96.217.229 (*id.* at 18:00:05); (i) 67.131.250.102 (*id.* at 18:00:19); (j) 67.18.33.226 (*id.* at 18:00:28); (k) 69.56.226.102 (*id.* at 18:00:41); www.i2hub/dgucwa/face (Cooper Reply Decl., Exh. J (GUCWA 0097) at 9:10:17-9:10:30; and (l) www.connectu.com/importer (*id.* at 9:17:01).

It bears repeating that this list of missing IP addresses and URLs is simply representative, and in no way exhaustive. Facebook has no way of knowing how many other sources were ignored by Defendants when responding to the Interrogatories; however, the omissions present unambiguous proof that the current responses are incomplete. Facebook is entitled to full and complete responses to Interrogatories Nos. 3-4 from Defendants, supported by a reasonable and diligent search of *all* the information in their possession, custody and control. The motion to compel should be granted to ensure such a search is undertaken.

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c:\inetpub\connectu.com\upload and c:\inetpub\i2hub.com\upload\pictures. Cooper Reply Decl. Exh. J (GUCWA 0117) at 15:03:10-15:20:39.

[4] The omission of any reference by PNS and Williams in their Interrogatory responses to the IP address 192.168.0.35 is particularly serious. That appears to be where the ConnectU "schema," or master database (including presumably some or all of the missing email and invitation database information), was located. *Id.* (GUCWA 0112) at 13:43:58.

D. Williams Declaration Reflects An Incomplete Evaluation Was Made Of The Files Actually Provided To Him By PNS

Further undermining Defendants' positions concerning their supposed inability to answer Interrogatories Nos. 3-4, the Williams Declaration fails to provide a complete analysis of even those selected files that actually were provided to him by Taves. Williams declares that his investigation of the files from the incomplete list of IP addresses sent by Taves consisted of looking at only "*several of these files*," **not all,** "to determine whether the information in these files could be used in responding to Interrogatory Nos. 3 or 4…" Mosko Decl., Exh. 3, ¶ 4 (emphasis added). He concluded that a review of this set of files was "not helpful in responding to these interrogatories." Mosko Decl., Exh. 3, ¶ 5.

There are virtually no details contained within the Williams Declaration that explain or support his conclusions. Based on these cursory statements, Plaintiffs have no way of determining the kind of analysis Williams conducted and whether he only looked at a small percentage of the files selected and sent by Taves. In fact, the Declaration actually creates more questions than it answers.

For instance, why did Taves select the files he forwarded? Why did Taves only look to the IP addresses provided in Williams incomplete interrogatory response, rather than the many others also used by Defendants to access Facebook? Why were the files themselves not produced to Facebook pursuant to prior discovery requests, given their relevance? How detailed was the analysis conducted by Williams on the several files that he looked at? Did Taves do an analysis of his own? Defendants' offer no explanation to these fundamental issues.

Given these myriad problems with the arguments offered by Defendants in defense of their inability to supplement, it again is apparent that the motion to compel should be granted.

E. The Williams Declaration Is Conspicuously Silent On Key Insufficiencies Identified In The Opening Brief.

The Williams Declaration also fails to address several of the detailed inadequacies cited by Facebook concerning Defendants' unwillingness to respond in full to the Interrogatories, and the relevance of the missing information. Indeed, the Declaration completely omits discussion of the points made by Facebook concerning the need for Defendants to provide *all* reasonably available information.

1. PNS And Williams Responses To Interrogatory No. 3 Improperly Avoid Explaining Their Purposes In Accessing Facebook's Website

Defendants make no credible effort to explain why they refuse to answer Interrogatory No. 3 in full. That Interrogatory specifically requires PNS and Williams to identify "the purpose for the use or access" of the Facebook's website. *See* Sutton Decl., Exhs. D-E (PNS' and Williams' Responses to Interrogatory No. 3) Notably, PNS simply refuses to answer that portion of the Interrogatory, and it makes no effort in the Opposition to defend that silence. In light of the fact that PNS billed for its services in developing Importer and Social Butterfly, PNS' refusal to explain its motivations for accessing the Facebook website is wholly improper, and necessitates supplementation.

Williams, meanwhile, cryptically responds with the very language of the Interrogatory, claiming that the purposes for all of his accesses was "to obtain data from the facebook.com website." *Id.* Such a response is deliberately evasive, since it fails to state what particular reasons existed to access the website, who instructed Williams to access the site, and whether financial gain was a motivation. In effect, Williams avoids answering the Interrogatory at all. Again, therefore, supplementation is necessitated.

2. The Williams Declaration Makes No Representations Regarding "Spam" Emails Sent By ConnectU To Facebook Users.

Perhaps the most glaring deficiency in Williams' Declaration relates to the January 2006 billing record in which Williams describes creating a system to calculate the number of emails sent to Facebook California users. *See* Sutton Decl., Exh. H. Interrogatory Number 4 demands that Defendants detail all instances by date and email address when they communicated with parties whose email addresses they had obtained from Facebook. *Id.* Exhs. D-E (Responses to Interrogatory No. 4). This information is highly relevant to the underlying claims, since (for instance) damages under the Federal CAN-SPAM Act can be set by the number of unsolicited "spam" emails sent by ConnectU.[5] *See* 15 U.S.C. § 7706(g)(3). Yet, Defendants claim they have no means to answer the Interrogatory. *See* Opp'n Br. at 2; Mosko Decl. Exh. 3, ¶ 6.

Defendants' Opposition, however, makes overt misrepresentations regarding what Williams states in his declaration about whether he created a system to calculate the number of spam emails sent to Facebook users. In particular, Defendants' Opposition asserts:

> As the attached declaration of Winston Williams provides, the files referred to in his earlier deposition did not assist in determining whether any of the email addresses listed in the database table were used by ConnectU for the purposes of inviting others to join the ConnectU website. *Id.* at ¶ 5. Additionally, Mr. Williams concluded there was no way he could determine if any emails were sent to any persons at California schools. *Id.* at ¶ 6.

Opp'n Br. at 6. Contrary to what Defendants state, the Williams Declaration actually makes no representations regarding ConnectU's use of email addresses for inviting others to join its website. Nor does Williams conclude in his declaration that there was no way he could determine if any emails were sent to any persons at California schools. Mosko Decl. Exh. 3, ¶¶ 1-6.

The Opposition further contends that a billing note indicating that Williams had "started a system" to calculate the number of emails sent to California students does not establish whether such a system was ever completed or successful. Opp'n Br. at 8. Notably, Williams does not declare that the system was not successful. Defendants further assert that, "[n]othing in the record indicates that Mr. Williams calculated how many emails were distributed to California residents in January 2006, or any other time." *Id.* at 9. This is false. A document produced by PNS itself provides in one-half page of source code the very calculation PNS and Williams says is too complicated to replicate. *See* Cooper Reply Decl., Exh. K.

A review of the document reflects that the set of basic source code instructions, in effect, accesses a ConnectU database. The source code then sets up a query for a list of California educational email domains to search for in the ConnectU database. Next, the program requests data from the database about all emails sent by ConnectU. Then, the code calculates how many emails were sent to each California .edu domain in the list of domains provided. Finally, the program prints the total number of emails found in the database that were sent to each California .edu domain in the list provided, as well as totals the number of emails found in the database.[6] *Id.*

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[5] Defendants' Opposition does not dispute the relevancy of the discovery sought by Interrogatories Nos. 3 and 4.

Despite Defendants' un-sworn arguments that Williams never conducted the task to extract information regarding the sending of e-mails by ConnectU, the data resulting from the half page of code produced by PNS is strikingly similar to the "complicated process and numerous steps" described by Williams at his deposition and cited by Defendants in support of their opposition:

> Yeah. I mean, I believe you need to first determine every school that's in California and then determine every e-mail address domain extension for every school in California, and then you would need to determine every possible, like, iteration of that e-mail domain extension, and then you would have to have some way of filtering through the database and scanning through all of the e-mail addresses and applying to which ones actually were related to the students at California schools.

Mosko Decl., Exh. 5 at 157:23-158:7.

A table comparing the relevant source code, the data produced as a result of the specific line(s) of code, and the steps described by Williams at his deposition is provided below for ease of reference. The table demonstrates the different steps that would result in the number of emails ConnectU sent to Facebook's California users, and also demonstrates that Defendants' argument that they are unable to extract this data to supplement their responses to Interrogatories 3 and 4 is disingenuous at best.

SOURCE CODE	**RESULTING PROCESS FROM SOURCE CODE INSTRUCTION**	**WILLIAMS DEPOSITION TESTIMONY**
	Access a ConnectU database	
	Set up a list of California educational email domains to search for in the ConnectU database	"Yeah. I mean, I believe you need to first determine every school that's in California and then determine every e-mail address domain extension for every school in

[6] Should the Court want expert testimony explaining this code, Facebook is happy to provide it. It could not do so in these reply filings due to the confidentiality designations of the code and the time needed to get clearance for experts.

SOURCE CODE	RESULTING PROCESS FROM SOURCE CODE INSTRUCTION	WILLIAMS DEPOSITION TESTIMONY
		California..." Mosko Decl., Exh. 5 at 157:23-158:2.
	Requests data from the database about all emails sent by ConnectU	"…then you would have to have some way of filtering through the database and scanning through all of the e-mail addresses…" Mosko Decl., Exh. 5 at 158:3-5
	Calculates how many emails were sent to each California .edu domain in the list above.	"…and applying to which ones actually were related to the students at California school." Mosko Decl., Exh. 5 at 158:5-7.
	Prints the total number of emails found in the database that were sent to each California .edu domain in the list above, as well as a total number of emails found in the database.	

Clearly, the information responsive to Interrogatory No. 4 is available to Defendants. The Court may reasonably assume that the real reason that PNS and Williams refuse to provide details about either the search of the PNS database cursorily described in their papers, or of the details of Williams' January 2006 search for California email addresses, is because production of such information is damaging to Defendants' case. Defendants do not lack the resources to produce the relevant information from their own database concerning solicitations of Facebook users, including California-based Facebook users. At a minimum, because tables and fields had to be set up to accommodate the information, Defendants' missing database information should contain directories with the total number of invitations that were sent by Defendants, and the identities of the addresses to which they were sent. *See*, *e.g.*, Cooper Reply Decl. Exh. J (GUCWA 0117) at 15:03:10-15:20:39. In fact, Defendants did calculate the number of invitations sent by ConnectU, the number of emails queued, the number of rows in their database checked, and the like on a daily, weekly, and monthly basis – and it is notable that Defendants deliberately avoid *any* discussion of that fact. *See* Sutton Decl., Exh. G.

Defendants simply do not want to produce the missing (but available) information, since it grossly expands their potential liability. That, however, is not a proper basis to refuse to respond to either Interrogatory Number 3 or 4.

3. **The Williams Declaration Fails To Address PNS' Duty To Consult Its Employees**

As asserted in Facebook's opening brief, PNS has a duty to obtain information from all sources available to it, including Wayne Chang and other PNS employees. The Williams Declaration makes no assertions related to PNS' duty to consult Chang or these other employees. Williams does not provide an assertion related to persons who are possible sources of responsive and relevant information to respond to the interrogatories at issue. This failure also by itself warrants the granting of the motion to compel.

F. **PNS Failed To Provide All Information Available To It**

Rather than comply with its discovery obligations pursuant to Fed. R. Civ. Proc. 33, PNS continues to ignore established authority that requires it to respond to the interrogatories with all information available to the company. *See e.g.*, *FTC v. Braswell,* No. CV 03-3700-DT (PJWx), 2005 U.S. Dist. LEXIS 42817 (C.D. Cal. Sept. 26, 2005). PNS, instead, seeks to limit the source of its discovery responses to the knowledge of Taves, someone who it asserts had only limited knowledge regarding PNS' work for ConnectU. Opp'n Br.at 7. With this assertion, PNS disregards instructive authority holding that a party cannot unreasonably limit answers to matters within the party's own knowledge, while also ignoring information available to him or under his control. *Pilling v. Gen. Motors Corp.,* 45 F.R.D. 366, 369 (D. Utah 1968); *Braswell* at *11. Moreover, the documentation reflecting Taves' personal knowledge of IP addresses and URLs that PNS still failed to cite in its responses to the Interrogatories underscores that even Taves' position concerning PNS' lack of knowledge is not credible.

The Williams Declaration simply does not fulfill PNS' discovery obligations to provide full and complete responses to Interrogatories Nos. 3 and 4. The Williams' Declaration only addresses what Williams did to determine whether there was any additional responsive information for him to supplement his responses. Conspicuously absent from Defendants' Opposition is a declaration from PNS indicating that it has consulted all persons and all other sources of information to respond to the interrogatories, including Wayne Chang and/or Joel Voss. Defendant Chang is a current employee of PNS and someone who was intimately involved in the development and implementation of Social Butterfly and Importer for ConnectU. Defendants' Opposition and the Williams Declaration fail to address why Chang was not consulted in order to determine whether Defendants could further supplement Interrogatories Nos. 3 and 4. Defendants should be compelled to do so.

G. Defendants' Request For Sanctions Should Be Denied

Remarkably, in a single sentence Defendants request an Order paying them their costs for preparing their Opposition to the motion to compel. *See* Opp'n Br. at 1. This request is retaliatory to Plaintiffs' own pending motion for sanctions, and it is no accident that Defendants make no effort to defend it. In any event, the request is not supported by the required Declaration pursuant to Local Civil Rule 37-3, and must be denied for that reason alone. The request should be denied, however, for the simple reason that, as shown above, Plaintiffs' motion to compel is meritorious and should be granted.

/ / /

III. CONCLUSION

Pacific Northwest Software's and Winston Williams' responses to Facebook's Interrogatories Nos. 3 and 4 are incomplete on their face, as reflected by Defendants' own documentation. The motion to compel should be granted.

Dated: November 14, 2007

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/ Yvonne P. Greer /s/

Yvonne P. Greer
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THE FACEBOOK, INC. and MARK ZUCKERBERG

CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on November 14, 2007.

Dated: November 14, 2007.

Respectfully submitted,

/s/ Yvonne P. Greer /s/
Yvonne P. Greer